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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re M.A., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B292894
(Super. Ct. No. 17JV00038)
(Santa Barbara County)

SANTA BARBARA COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

E.M.,

Defendant and Appellant.

E.M. (Mother) appeals orders of the juvenile court denying her modification petition, declaring that her minor child M.A. is adoptable, and terminating her parental rights. (Welf. & Inst.

Code, §§ 388, 366.26, subd. (c)(1).)¹ Among other things, we conclude that the court properly determined that the beneficial parental relationship exception to adoption does not apply, and affirm. (§ 366.26, subd. (c)(1)(B)(i).)

*FACTUAL AND PROCEDURAL HISTORY*²

Mother and D.A. (Father) are the parents of now two-year-old M.A. At M.A.'s birth, she and Mother had positive toxicology screens for methamphetamine and marijuana. Mother and Father were then homeless and Mother had received limited prenatal care.

On February 2, 2017, Santa Barbara County Department of Social Services (DSS) filed a juvenile dependency petition alleging that Mother and Father had failed to protect M.A. (§ 300, subd. (b) [failure to protect].) The petition stated that Mother and Father had recently used methamphetamine and marijuana and that they had criminal histories including drug and domestic violence offenses. Mother was on active probation for drug possession and had been ordered to participate in residential drug treatment. In addition, the petition alleged that Father was disruptive at the hospital during M.A.'s birth and threatened a physician with a steak knife, necessitating police intervention.

The juvenile court ordered that M.A. be detained and it placed her custody and care with DSS. Following her protective

¹ All statutory references are to the Welfare and Institutions Code unless stated otherwise.

² We have taken judicial notice of the appellate record prepared in the writ petition filed in this matter. (*E.M. v. Superior Court* (Super. Ct. Santa Barbara County, 2018, No. B289649); Evid. Code, §§ 452, subd. (d), 459.)

custody, M.A. has resided with foster parents who now seek to adopt her.

On March 16, 2017, the juvenile court sustained the allegations of the dependency petition, and ordered DSS to provide family reunification services to Mother and Father. The reunification services plan included individual therapy, parent education, substance abuse treatment, and random substance abuse testing. At a later disposition hearing, the court continued M.A.'s removal from her parents' care and affirmed the provision of family reunification services.

A DSS addendum report filed on April 27, 2017, reported that Mother left her drug treatment program and was living with Father in violation of a "no-contact" court order. Also, Mother recently had been arrested, incarcerated, and "removed" from the drug court treatment program.

On several days in November 2017, the juvenile court held a contested six-month review hearing. The DSS report prepared for the hearing stated that Mother was dismissed from the "Recovery Way" drug treatment program for noncompliance with program rules. During the review period, Mother was also arrested on four occasions for domestic violence, violation of a court order, and drug possession. Additionally, Mother informed the DSS social worker that she hoped to live with Father as a family following his release from jail.

At the conclusion of the six-month review hearing, the juvenile court terminated reunification services to Father and continued services to Mother. The court also set a 12-month review hearing.

On March 15, 2018, DSS filed its 12-month review report recommending the termination of reunification services to

Mother. Mother recently reported to DSS that she was five months pregnant with Father's child. Mother stated that she planned to live with Father and included his name on a housing application. She also intended to have the no-contact order with Father removed. Mother had ceased attending individual therapy and missed four drug tests. DSS noted that Mother had consistently visited with M.A. but that she failed to satisfy completely her reunification plan objectives.

Following the conclusion of the contested 12-month review hearing, the juvenile court terminated reunification services to Mother. The court also set a permanent plan hearing for M.A.

Section 366.26 Hearing and Modification Petition

On July 26, 2018, DSS filed a permanent plan report pursuant to section 366.26. DSS recommended that M.A. be referred for adoption and that Mother's and Father's parental rights be terminated. DSS noted that M.A. had been living with the proposed adoptive parents since she was two days old.

In an addendum report, DSS reported that Mother stated that she was interested in maintaining a relationship with Father and had recently traveled outside the county with him. In July and again in August 2018, Father was arrested and incarcerated for methamphetamine use. Mother later informed a DSS social worker that she planned to attend Father's court hearing.

On August 16, 2018, Mother filed a section 388 petition to change the juvenile court's order terminating reunification services. She requested the return of M.A. with the provision of family maintenance services. Mother stated that she had attended two sessions of anger management counseling and had completed substance abuse treatment at Coast Valley Substance

Abuse Treatment Center. Mother also stated that she and her newborn infant A. were residing with a longtime family friend.

On August 30, 2018, the juvenile court held a combined permanent plan and modification petition hearing. Mother presented witnesses who had supervised her visits with M.A. The witnesses described the visits as affectionate and appropriate. Mother brought nutritious food for M.A. and displayed exemplary parent skills, including teaching M.A. to walk and draw. M.A. smiled and reached for Mother, but also smiled and reached for her foster parents. A longtime family friend testified that Mother and newborn A. were living with her indefinitely, and that Father was not permitted in the home. Mother testified that she successfully completed probation, anger management therapy, individual counseling, and a six-month outpatient substance abuse program. Mother stated that she was pursuing a high school diploma and planned to obtain employment.

Following the presentation of evidence and argument, the juvenile court decided that Mother did not establish a change of circumstances and that it was not in M.A.'s best interest to return to Mother's care. The court then denied the modification petition.

The juvenile court also found by clear and convincing evidence that M.A. is adoptable and that the beneficial parental relationship exception to adoption did not apply. The court then terminated parental rights.

Mother appeals and contends that the juvenile court erred by: 1) denying the modification petition, and 2) not applying the beneficial parental relationship exception to adoption. (§§ 388, 366.26, subd. (c)(1)(B)(i).)

DISCUSSION

I.

Mother argues that the juvenile court abused its discretion by denying her modification petition

Section 388 provides that any interested person may petition for modification of an order in a dependency proceeding upon showing changed circumstances. Subdivision (d) of that section requires the court to order a hearing "[i]f it appears that the best interests of the child . . . may be promoted by the proposed change of order" "The standard for evaluating the merits of a section 388 petition is the best interests of the child." (*In re J.P.* (2017) 15 Cal.App.5th 789, 800.)

A parent seeking modification of an order bears the burden of making a prima facie showing that the proposed modification will be in the child's best interest. (*In re J.P.*, *supra*, 15 Cal.App.5th 789, 800.) "There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the [child]." (*In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1079.) We review decisions regarding petitions to modify a court order for an abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415-416.)

The juvenile court did not abuse its discretion by denying Mother's modification petition. Mother's recent efforts toward drug sobriety, anger management counseling, stable housing, and future employment reflect changing, rather than changed, circumstances. Moreover, Mother had violated a no-contact order with Father and had another child with him. Father also had recent arrests for methamphetamine use, and Mother admitted to DSS social workers that she intended to attend his court

hearing. She also admitted visiting outside the county with him. The court reasonably concluded that return of M.A. to Mother would not be in M.A.'s best interests. M.A. had a stable home with caregivers who had cared for her since birth and now intended to adopt her. Mother has not established that the court's decision was unreasonable.

II.

Mother asserts that the beneficial parental relationship exception to adoption precludes termination of her parental rights. (§ 366.26, subd. (c)(1)(B)(i).) She points out that she consistently visited with M.A., the visits were affectionate and appropriate, and she displayed exemplary parental skills. (*In re S.B.* (2008) 164 Cal.App.4th 289, 299 [parent need not establish that child has a “‘primary attachment’” to parent for beneficial parental relationship]; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534-1535 [regular visitation and contact satisfied by consistent visitation].) Mother argues that the detriment to M.A. by terminating parental rights outweighs any benefits of adoption.

Section 366.26, subdivision (c)(1)(B) requires the juvenile court to terminate parental rights if it finds by clear and convincing evidence that a child is likely to be adopted, unless "[t]he court finds a compelling reason for determining that termination would be detrimental to the child" due to an enumerated statutory exception. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 612.) The beneficial parental relationship exception of section 366.26, subdivision (c)(1)(B)(i) requires a showing of "regular visitation and contact" and "benefit" to the child from "continuing the relationship." (*Grace P.*, at p. 612; *In re I.R.* (2014) 226 Cal.App.4th 201, 212.) "To meet the burden of

proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.) The parent must establish the existence of a relationship that promotes the child's well-being to such a degree as to outweigh the well-being the child would gain in a permanent home with adoptive parents. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 936; *Dakota H.*, at p. 229 [preference for adoption overcome by proof of a substantial, positive emotional attachment by child to parent].)

Only in the "extraordinary case" can a parent establish the exception because the permanent plan hearing occurs after the court has repeatedly found the parent unable to meet the child's needs. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.) Adoption remains the norm; only in exceptional circumstances may the court choose an option other than adoption. (*In re E.T.* (2018) 31 Cal.App.5th 68, 76 [discussion of general rule].)

The exception requires proof of "a *parental* relationship," not merely a relationship that is "beneficial to some degree but does not meet the child's need for a parent." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1350.) The existence of a beneficial relationship is determined by the age of the child, the portion of the child's life spent in parental custody, the quality of interaction between parent and child, and the child's particular needs. (*In re Grace P.*, *supra*, 8 Cal.App.5th 605, 612-613 [discussion of general rule]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689 [beneficial relationship existed where children in mother's care most of their lives].) "The application of the beneficial parent relationship exception requires a robust individualized inquiry given that '[p]arent-child relationships do not necessarily conform to a particular pattern,' and no single

factor – such as supervised visitation or lack of day-to-day contact with a noncustodial parent – is dispositive." (*Grace P.*, at p. 613.) The exception must be examined on a case-by-case basis, considering the many variables affecting a parent/child bond. (*In re E.T.*, *supra*, 31 Cal.App.5th 68, 76.) Where a parent has not had custody of the child or has not advanced beyond supervised visitation, the burden of establishing a parental role "will be difficult to make." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.)

Mother did not meet her evidentiary burden to establish that her relationship with M.A. was sufficiently compelling to outweigh the legal preference for adoption. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528-529 [general rule that parental benefit exception applies only where parent has demonstrated that benefits to the child of continuing the parental relationship outweigh the benefits of adoption].) Although Mother and M.A. enjoyed loving and appropriate visits, an adoptive home would provide M.A. with permanence, security, and stability. Foster parents have cared for M.A. since she was two days old; she has never lived with Mother or Father. Moreover, despite Mother's positive visits with M.A., Mother never progressed beyond supervised visits.

Here Mother did not meet her evidentiary burden of establishing extraordinary circumstances warranting application of this narrow exception to the legislative preference for adoption. The decision of the juvenile court rests upon sufficient reasonable and credible evidence. (*In re Jasmine D.*, *supra*, 78 Cal.App.4th 1339, 1351.)

The orders are affirmed.
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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Nancy R. Brucker, under appointment by the Court of
Appeal, for Defendant and Appellant.

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